

REMARKS

Upon entry of this Amendment, claims 1-20 will remain pending and under examination. Applicants respectfully request reconsideration of this application in light of the following remarks.

In the Office Action,¹ the Examiner rejected claims 1-5, 8-14, 17, and 18² under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,976,258 to Goyal et al. (“Goyal”); and rejected claims 6, 7, 15, and 16 under 35 U.S.C. § 103(a) as being unpatentable over Goyal in view of U.S. Patent No. 6,912,587 to O’Neil (“O’Neil”).

Applicants respectfully traverse the Examiner’s rejections for the following reasons.

I. Regarding the Amendment of the claims

By this amendment, Applicants amend claims 10, 13, and 15 to improve form or grammar and not for reasons related to patentability. Applicants also add new claims 19 and 20 which, although of different scope, recite similar elements to those recited by claims 1 and 2. Claims 19 and 20 are therefore allowable at least for the reasons discussed below with respect to claims 1 and 2.

II. The rejection of 1-5, 8-14, and 17-18 under 35 U.S.C. § 102(e) as being anticipated by Goyal is improper.

Applicants respectfully traverse the rejection of claims 1-5, 8-14, 17, and 18 under 35 U.S.C. § 102(e) as being anticipated by Goyal. In order to properly establish

¹ The Office Action contains a number of statements reflecting characterizations of the related art and the claims. Regardless of whether any such statement is identified herein, Applicants decline to automatically subscribe to any statement or characterization in the Office Action.

² The Office Action does not indicate the grounds of rejection for claims 8 and 17. However, a rejection of these claims are provided on p. 9 using only the Goyal reference. Applicants therefore assume that claims 8 and 17 are rejected under 35 U.S.C. § 102(e) and request clarification in the subsequent Office Action, should the Examiner maintain the rejection.

that Goyal anticipates Applicants' claimed invention under 35 U.S.C. § 102, each and every element of each of the claims in issue must be found, either expressly described or under principles of inherency, in that single reference. Furthermore, “[t]he identical invention must be shown in as complete detail as is contained in the ... claim.” See M.P.E.P. § 2131, quoting *Richardson v. Suzuki Motor Co.*, 868 F.2d 1126, 1236, 9 U.S.P.Q.2d 1913, 1920 (Fed. Cir. 1989).

Goyal does not disclose each and every element of Applicants' claimed invention. Claim 1 calls for a method including, for example, “receiving, from an application process, a document specifying a communication protocol and a communication channel.” The Examiner asserts that Goyal discloses this element in col. 5, lines 32-42 and col. 16, lines 47-52, which discloses in part: “the server program 107 obtains the quality of service parameters associated with the virtual host 115 from the quality of service table 119.” Even assuming that Goyal's quality of service table 119 is a “document,” Goyal does not teach or suggest that the quality of service table, or the quality of service parameters stored therein, specify “a communication protocol and a communication channel,” as recited by claim 1.

Moreover, claim 1 calls for a method including, for example, “instantiating the communications channel with the application process using the communication protocol.” The Examiner has not identified what portion of Goyal allegedly teaches or suggests the claimed “application process.” The Examiner simply cites to Goyal's disclosure in col. 6, line 66 through col. 7, line 4, which discloses: “object code 121 reads the quality of service parameter table 119, and calls the quality of service manager 127 of the operating system 105 to set the appropriate quality of service

guarantees.” Office Action at p. 3. Neither the “object code,” nor the “operating system,” nor any other element of Goyal constitute the claimed “application process” because Goyal does not teach or suggest instantiating a communications channel with either the “object code” or “operating system” using a communication protocol identified in a document. Accordingly, Goyal does not teach or suggest “instantiating the communications channel with the application process using the communication protocol,” as recited by claim 1.

Goyal therefore cannot anticipate claim 1 or claims 2-5 and 8 by reason of dependency therefrom. Accordingly, Applicants respectfully request that the Examiner reconsider and withdraw the rejection of claims 1-5 and 8 under 35 U.S.C. § 102(e) as being anticipated by Goyal.

Independent claim 9 recites a combination including, for example, “a service handling at least locating, reserving, allocating, monitoring, and deallocating one or more computational resources on the computer system for an application program.” The Examiner cites to col. 7, lines 35-56 and col. 9, lines 39-46 of Goyal for allegedly disclosing this element, Office Action at p. 5, but neither these portions nor any other portion of Goyal teaches or suggests a service for “reserving, … monitoring, and deallocating one or more computational resources on the computer system.” The cited portion of Goyal merely discloses setting “quality of service guarantees for the child process 109 based on parameters.” Goyal, col. 7, lines 42-43.

Furthermore, claim 9 recites a combination including, for example, “the application program configured to execute as an application process managed by the service.” The Examiner has not identified what portion of Goyal allegedly teaches or

suggests the claimed "application program" and "service."³ Assuming that the Examiner asserts that Goyal's read wrapper 423 constitutes the claimed "service" and that Goyal's child process 109 constitutes the claimed "application process," these assertions are incorrect. Goyal's read wrapper 423 does not manage the child process 109 or communication. Rather, Goyal discloses: "the child process 109 ... continues to manage communication." Goyal, col. 13, lines 63-65.

Accordingly, Goyal cannot anticipate independent claim 9 or claims 10-14 and 17-18 by reason of dependency therefrom. Applicants therefore respectfully request that the Examiner reconsider and withdraw the rejection of claims 9-14 and 17-18 under 35 U.S.C. § 102(e) as being anticipated by Goyal.

III. The rejection of claims 6-7 and 15-16 under 35 U.S.C. § 103(a) as being unpatentable over Goyal in view of O'Neal is improper.

Applicants respectfully request that the Examiner reconsider and withdraw the rejection of claims 6-7 and 15-16 because a prima facie case of obviousness has not been established with respect to these claims.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). M.P.E.P. § 2142, 8th Ed., Rev. 2 (May 2004), p. 2100-128.

³ The Examiner quotes a portion of Goyal with a citation to Goyal, col. 7, lines 25-56 and col. 9, lines 39-46. Office Action at p. 5. However, the quoted portion appears to be Goyal, col. 13, lines 51-58.

A prima facie case of obviousness has not been established because, among other things, neither Goyal nor O’Neal, taken alone or in combination, teaches or suggests each and every element of Applicants’ claims.

Claims 6-7 and 15-16 depend from independent claims 1 and 9, respectively, and therefore include all of the elements recited therein. As discussed above, Goyal fails to teach or suggest each and every element recited by independent claims 1 and 9. O’Neal fails to cure Goyal’s deficiencies.

The Examiner asserts that O’Neal discloses “an application process to perform an action, wherein the action is one of start, stop, wait, resume, and change priority.” Office Action at p. 8. Even assuming this assertion is true, which Applicants do not concede, O’Neal fails to teach or suggest “receiving, from an application process, a document specifying a communication protocol and a communication channel” and “instantiating the communications channel with the application process using the communication protocol,” as recited by claim 1 and required by dependent claims 6 and 7. O’Neal also fails to teach or suggest “a service handling at least locating, reserving, allocating, monitoring, and deallocating one or more computational resources on the computer system for an application program” and “the application program configured to execute as an application process managed by the service,” as recited by independent claim 9 and required by dependent claims 15 and 16.

For at least the reason that neither Goyal nor O’Neal teaches or suggests each and every element required by dependent claims 6, 7, 15, and 16, no prima facie case of obviousness has been established with respect to these claims. Applicants therefore respectfully request that the Examiner reconsider and withdraw the rejection of claims 6,

7, 15, and 16 under 35 U.S.C. § 103(a) as being unpatentable over Goyal in view of O'Neal.

IV. Conclusion

In view of the foregoing amendments and remarks, Applicants respectfully request reconsideration and reexamination of this application and the timely allowance of the pending claims.

Applicants respectfully request that the Examiner respond to every point raised herein in accordance with M.P.E.P. § 707.07(f). Should the Examiner continue to dispute the patentability of the claims after consideration of this Reply, Applicants encourage the Examiner to contact Applicants' undersigned representative by telephone to discuss any remaining issues or to resolve any misunderstandings.

Please grant any extensions of time required to enter this response and charge any additional required fees to our Deposit Account No. 06-0916.

Respectfully submitted,

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